



BOARD OF COUNTY COMMISSIONERS

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Thomas Ballentine, P.E.
Department of Growth and
Environmental Management
3401 West Tharpe Street
Tallahassee, Fla. 32303

February 03, 2005

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County Attorney
(850) 487-1008

Dr. Harvey Harper, PhD, P.E.
Environmental Research and Design, Inc.
3419 Trentwood Boulevard, Suite 102
Orlando, Florida 32812-4863

Dear Harvey:

As I previously reported to you in an e-mail on January 13th, the extension on the Lake Lafayette Watershed Study contract expired on October 31, 2004. No work after that expiration can be reimbursed by the County until ERD's contract is again extended.

In order to extend the contract, we will need to go again before the Board of County Commissioners. **We will need your involvement and assistance in order to get the contract renewed.**

First, we will need a written explanation as to why the project has been delayed and not completed even after a one-year contract extension. This will be attached to the agenda item seeking contract extension. Second, we will need a scope of work for the remaining portion of the project, which should cover the intent and items set forth in the original scope, and a schedule for this work. (We have gotten the EPA grant period extended until October 1, 2006, so the schedule needs to end at least two months before this.) This Scope and Schedule will become part of the contract extension being presented to the Board. Third, we will need for you to attend the Board meeting, which is presently scheduled for Tuesday, February 22, 2005, starting at 3:00 P.M.

As you may remember, when the Board approved extending the contract on May 13, 2003, they included in the contract extension Exhibit D (attached) which contained specific performance criteria and a clause calling for liquidated damages if these criteria were not met. This clause stated, "For each day that the contractor is in default for each milestone, the Contractor or its Surety shall pay to the County, not as a penalty, but as liquidated damages, the sum of \$200."

Only the first of these criteria, providing an Equipment Installation Report by June 30, 2003, has been achieved. Milestones two through five have not been achieved. Milestone 2, the second Quarterly Monitoring Report due January 15, 2004 was not received until December 29, 2004, or 348 days late. Milestone 3, the fourth Quarterly Monitoring Report due on July 15, 2004 was not submitted until January 6, 2005, or 175 days late. Milestone

4, the "Existing Status of Lake Lafayette and the Lake Lafayette Watershed - 2003 Report" due on August 30, 2004 has not yet been submitted, and was 156 days late on January 31, 2005. Milestone 5, the "Final Lake Lafayette Watershed Study Report" which was due on October 30, 2004 has not yet been submitted, and was 92 days late on January 31. The total days late for all four items is 771. Thus on January 31, 2005 ERD's total liquidated damages pursuant to Attachment D of the contract extension are \$154,200 (771 total "default" days x \$200 per "default" day).

The total value of the ERD contract to perform the Lake Lafayette Watershed Study is \$299,185.00. To date, the County has paid ERD for \$140,478.90 of services performed under its contract, thereby leaving \$158,706.10 of unspent ERD contract funds. Thus the liquidated damages are almost equivalent to the remaining value of the ERD contract, which is considerably beyond what could have been originally anticipated even assuming a worse case scenario. Whatever the case, however, these damages have now accrued and are what they are pursuant to Exhibit D of the contract extension. At this stage of the study, I believe it is in the County's interest to continue to employ ERD to complete the study. The decision to do so, and whether to stand firm on the cumulative cost of the liquidated damages, is in the hands of the Board of County Commissioners.

It will be Growth and Environmental Management staff's recommendation that the full imposition of the accumulated liquidated damages of \$154,200 (on January 31, 2005) not be assessed. We will recommend that the Board decide on a smaller amount.

We are still in the process of drafting the agenda item requesting the extension of ERD's contract. Having the above (2) requested items is necessary before we can complete this work. Once completed and approved, we will forward a final copy of the agenda item to you so that you are aware of what is being presented to the Board of County Commissioners.

Please respond immediately to this correspondence so that we can work together expeditiously to get the items necessary to have the Lake Lafayette Watershed Study contract extended. We will need to have our agenda item fully completed by Monday, February 6.

Sincerely,



Thomas Ballentine, P.E.
Senior Environmental Engineer

Attachments: Attachment D to the ERD, Inc. Contract Extension, May 13, 2003
(Will be faxed 02/03/05, 3:15 P.M).

cc Gary Johnson
John Kraynak